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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 WILLIAM MANUEL ALVAREZ-
11 CALO,

12 Petitioner,

13 v.

14 MIKE OBENLAND,

15 Respondent.

CASE NO. 3:19-CV-5904-BHS-DWC

ORDER

16 The District Court has referred this action filed pursuant to 28 U.S.C. § 2254 to United
17 States Magistrate Judge David W. Christel. Petitioner filed his federal habeas Petition seeking
relief from a state court conviction. *See* Dkt. 3.

18 In the Petition, Petitioner raises sixteen grounds for relief. Dkt. 3. On November 21,
19 2019, Respondent filed an Answer, arguing Petitioner failed to exhaust state remedies with
20 respect to 15 of his 16 habeas claims. Dkt. 7. Respondent argues the petition is “mixed,”
21 containing both exhausted and unexhausted claims, and should be dismissed without prejudice.
22 Dkt. 7. On December 3, 2019, Petitioner filed a Traverse, wherein he disputes his claims are
23 unexhausted. Dkt. 9. Petitioner also seeks the appointment of counsel because he is foreign born,
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1 does not read or write English, has dyslexia syndrome, and “cannot comprehend as adults do.”
2 Dkt. 9 at 4. The same day, Petitioner also filed a Motion to Appoint Counsel (Dkt. 10) wherein
3 he asserts he has competency issues and cannot intelligently read or write on his own. Dkt. 10 at
4 1. Petitioner alleges he has relied on help from other inmates. *Id.* at 1-2. Respondent opposes
5 Petitioner’s Motion to Appoint Counsel, arguing the Petition is “mixed” and if the Court
6 determines petitioner may proceed on all 16 grounds raised in the Petition and determines an
7 evidentiary hearing is necessary for one or more of those claims, the Court could appoint counsel
8 at a later time. Dkt. 11.

9 The Court has reviewed the Petition, Answer, State Court Record, Traverse, Motion to
10 Appoint Counsel, and Response, and while Petitioner has not provided declarations or other
11 evidence to support his request for the appointment of counsel, there is evidence in the record he
12 required an interpreter during his police interrogations and requested a competency evaluation
13 during the state court proceedings. *See* Dkt. 8, Exhibit 11 at 5 at fn. 7 (noting Petitioner’s police
14 interview was “largely in English but Investigator Catlett periodically acted as an interpreter
15 during the interview”); *id.* at 24 (petitioner argued his trial counsel was ineffective in failing to
16 obtain “Cultural Competency Evaluation” which he argued would have addressed his foreign-
17 born status, lack of understanding of English, and dyslexia syndrome).

18 Before the Court is able to make a determination on Petitioner’s Motion to Appoint
19 Counsel (Dkt. 10), the Court finds supplemental briefing is necessary to obtain additional
20 information and evidentiary support for Petitioner’s contentions he is unable to read, write, and
21 understand English. *See Warren v. C.I.R.*, 282 F.3d 1119, 1120 (9th Cir. 2002) (The Ninth
22 Circuit and Supreme Court precedent allow the Court to *sua sponte* order supplemental
23 briefing.).
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1 Accordingly, the Court orders the following:

- 2 • Petitioner is directed to file, on or before January 17, 2020, a supplement to his Motion to
3 Appoint Counsel. Petitioner should address his allegations he is unable to read, write, and
4 understand English in more detail and explain how he has been able to file numerous
5 pleadings before the Court. Petitioner should also submit declarations or other evidentiary
6 support related to his request for the appointment of counsel and his inability to read, write,
7 and understand English.
- 8 • Respondent may file a supplemental response to the Motion to Appoint Counsel on or
9 before January 31, 2020.
- 10 • Petitioner may file a reply to the Motion to Appoint Counsel on or before February 7, 2020.

11 The Clerk of Court is directed to re-note the Motion to Appoint Counsel (Dkt. 10) and the
12 Petition (Dkt. 3) for consideration on February 7, 2020.

13 Dated this 17th day of December, 2019.

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16 David W. Christel
17 United States Magistrate Judge
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